IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

FAO.No. 312 of 2007()

AGAINST THE ORDER DATED 12/04/2007 IN EA.10/2007,EP.74/2000 IN ARC.7/1997 of SUB COURT, SULTHAN BATHERY

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APPELLANT/PETITIONER

C.K.SASEENDRAN, S/O.KESHAVAN NAIR,
AGED 48 YEARS, PONNADA, USHUS, MANIYANKODE,
KALPETTA NORTH.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENTS:
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1. THE PAYANNOR SERVICE CORPORATIVE
BANK LTD. NO.F.1401.

2. NORTH MALABAR DISTRICT CORPORATIVE
SUPPLY AND MARKETING SOCIETY, REP. BY ITS
ADMINISTRATOR, KALPETTA POST,
VYTHIRI TALUK, WAYANAD DISTRICT.

3. SHEIAK AND COMPANY, MANAGING PARTNER,
SHEIK USMAN, C.K.HOUSE, KUPPADITHARA P.O.,
MUNDAKUTTY.

R3 BY ADV. SRI.T.M.SREEDHARAN(CAVEATOR)
SRI.V.P.NARAYANAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & V.K.MOHANAN, JJ.

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F.A.O. No.312 of 2007

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Dated this the 30th day of October, 2007.

JUDGMENT

Raman, J.

This appeal is filed against the order passed by the Execution Court, the Sub Court, Sulthan Bathery in E.A. No.10/2007 in E.P. No.74/2000 in ARC No.7/1997. That was an application filed under Section 47 read with Order XXI Rule 90 of the Code of Civil Procedure. The appellant-petitioner is a stranger. The property belonging to the judgment debtor was sold in public auction. Auction Purchaser deposited the amount. It is to set aside that sale that the application was filed by the appellant-petitioner. He has no interest in the property as such. The appellant, however, alleges that there was material irregularity or fraud in the matter of conducting the auction. According to the appellant, there was no proper publication of the time and the venue of the auction scheduled to be held and he also submits that there is material irregularity. But before considering such a contention, the appellant should necessarily show that he was an interested person within the meaning of Order XXI Rule 90 of C.P.C. Of course if he came to participate in the public auction and finds that because of the

absence of information about time and place, he was prevented in participating the auction, perhaps that could be a contention that may have to be considered by the court below. In the application now filed by the appellant what he has stated in paragraph 2 is as follows:

2. He has no case that he wanted to participate in the auction. He only espouses the cause of others. Further, he has averred in his petition that others came there by about 2.20 p.m., whereas the auction was held at 1.45 p.m. As per the Civil Rules of Practice, the auction time is between

1.45 and 3.45. The auction even according to the petitioner was held at 1.45 p.m. and as already stated, when the petitioner had no desire to participate in the auction, he cannot be said to be an interested person. Further, the court below has found that there is no material irregularity or fraud as alleged in the petition. In the circumstances, there is no merit in this appeal. Accordingly the same is dismissed.

P.R.RAMAN
Judge

V.K.MOHANAN
Judge

pms